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BY OVERNIGHT DELIVERY

Ms. Laura Johnson
Remedial Project Manager (3HS23)
DE, VA, WV Remedial Branch
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RE: Peck Iron and Metal Site, Portsmouth, Virginia
Response to Notice of Potential Liability

Dear Ms. Johnson:

This letter is in response to EPA's May 20, 2009 correspondence to Virginia Electric and Power Company ("Dominion Virginia Power" or "the Company") regarding the above-referenced site (the "Site"). In its letter, EPA states that Dominion Virginia Power "may be liable" as an arranger under Section 107(a) of CERCLA with respect to the Site, pointing to an unspecified "reason to believe" that the Company "arranged for the disposal and/or treatment of lead, zinc and PCBs" at the Site. Dominion Virginia Power, however, has never arranged for the disposal of lead, zinc, PCBs or any other hazardous substance at the Site, and EPA's unfounded allegation of liability is not supported by the facts, the CERCLA statute, or applicable case law. To the contrary, Dominion Virginia Power did not arrange for disposal of any materials containing hazardous substances at the Site, and cannot be considered a responsible party with respect to the Site.

As discussed in its December 3, 2008 response to EPA's CERCLA Section 104(e) information request, Dominion Virginia Power's only connection to the Site was through the sale of recyclable iron, steel and aluminum to Peck Iron & Metal Company ("Peck Iron") during the 1990's. The materials the Company sold to Peck Iron during this period consisted entirely of scrap metal such as structural steel, piping and similar metal components, and did not include any materials or equipment that would have contained or come into contact with hazardous substances in any concentration. Specifically, these scrap materials did not include any transformers, capacitors, wiring, batteries or other items alleged in EPA's letter to have been the source of hazardous substances detected at the Site, and did not otherwise contain PCBs, lead, zinc or any other hazardous substance. In fact, during the time the relevant transactions took

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place, it was Dominion Virginia Power's understanding that Peck Iron was unable to accept transformers, batteries and other materials containing hazardous substances – and the Company employed various practices to ensure no materials containing hazardous substances were present in the scrap metal accumulations it sold to Peck Iron. It was also the Company's understanding that Peck Iron screened the materials upon receipt and/or prior to processing, to ensure that no prohibited items were inadvertently included with the scrap metal. Because there is no indication that hazardous substances were present in the materials the Company sold to Peck Iron for delivery to the Site, EPA has no basis for asserting that Dominion Virginia Power "arranged for disposal or treatment of hazardous substances" at the Site under CERCLA, regardless of the nature of these transactions.

Even if EPA were able to demonstrate that the materials Dominion Virginia Power sold to Peck Iron contained hazardous substances, these transactions would still not constitute "arrangement for disposal" under CERCLA. First, in entering into these sales transactions with Peck Iron, Dominion Virginia Power was not seeking to "dispose" of anything. Instead, the Company was selling a valuable product – scrap metal – to Peck Iron for significant consideration. During the time these transactions occurred, a strong market existed for scrap metal, and Peck Iron paid a competitive price for these materials. Fourth Circuit case law holds that the sale of scrap metal for recycling or reclamation constitutes the sale of a valuable material, and would not be considered an "arrangement for disposal" under CERCLA. *See Pneumo Abex Corp. v. High Point, Thomasville and Denton Railroad Co.*, 142 F.3d 769, 776 (4th Cir. 1998) (holding that defendant's sale of used wheel bearings to a reclamation facility did not constitute arrangement for disposal, and that the transactions were instead properly characterized as the sale of "valuable products"). Similarly, Dominion Virginia Power's sale of scrap metal to Peck Iron would be considered the sale of a valuable product, to which no CERCLA liability would attach.

The United States Supreme Court recently provided additional support for this position in *Burlington Northern & Santa Fe Railway Co. v. United States*, 556 U.S. ___, 129 S. Ct. 1870 (2009), holding that a party cannot be considered to have "arranged for disposal" of hazardous substances unless it *intended* that hazardous substances be disposed of as part of the transaction in question. The Court thus concluded that the sale of a useful product does not constitute "arrangement for disposal" where there is no intent to dispose, even where the seller in that case had knowledge that spills or leaks associated with its product were occurring at the purchaser's facility. Dominion Virginia Power entered into the subject transactions with Peck Iron intending only to sell valuable scrap metal to Peck Iron for recycling, and did not intend to dispose of these materials – and certainly did not intend to dispose of any hazardous substances if any may, in fact, have been present in the materials. Therefore, the Company cannot be considered to have "arranged for disposal" of a hazardous substance in connection with the Site.

Dominion Virginia Power's transactions with Peck Iron also would be exempt from CERCLA liability as bona fide recycling transactions, pursuant to the Superfund Recycling

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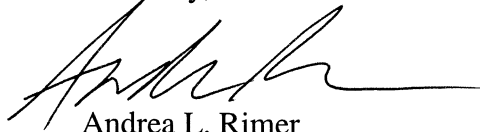
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Equity Act, 42 U.S.C. § 9627. This exemption states that an entity that “arranged for recycling of a recyclable material shall not be liable” as either an “arranger” or “transporter” under CERCLA. *Id.* § 9627(a)(1). Based on the nature of its transactions with Peck Iron and its own internal practices, Dominion Virginia Power is able to demonstrate each of the elements required to prove this defense. *See id.* § 9627(d). With respect to the sales of scrap metal at issue, a market certainly existed for these materials, and Peck Iron paid a competitive price for them. In addition, these materials appear to have met a commercial specification grade, and based on our understanding of Peck Iron’s operations, a substantial portion (and perhaps all) of the material was made available for use as a feedstock for the manufacture of a new salable product and would have been a replacement or substitute for a virgin product. Dominion Virginia Power did not melt the scrap metal prior to the transaction, and exercised reasonable care in the management and handling of the recyclable material. In addition, the Company had every reason to believe the materials would be recycled and managed properly, and that the Peck Iron facility was in compliance with substantive environmental laws in effect at the time.

Based on our review of the relevant transactions and documentation, Dominion Virginia Power does not appear to be in any way connected to the hazardous substances detected at the Site, nor could it be considered a liable party under CERCLA based on its sale of valuable, recyclable materials to Peck Iron. If EPA is aware of specific transactions or documents on which it is basing its stated belief that a connection may exist, we request that you provide those documents to us with an explanation of why EPA believes those particular transactions or documents give rise to liability at the Site, based on the CERCLA statute and current case law.

Please let me know if you have any questions. In addition, please note that Troutman Sanders has replaced McGuireWoods as counsel to Dominion Virginia Power with respect to the Site, so please be sure to direct any future correspondence regarding the Site to my attention, rather than to Darin Waylett. Should you need to send correspondence directly to Dominion Virginia Power regarding this matter, please direct it to: Clay Burns, Esq., Law Department, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219, with a copy to me.

Sincerely,



Andrea L. Rimer

cc: Clay Burns, Esq.